In the High Court of Judicature at Madras

Dated 13.04.2007

Coram

The Honourable Mr.Justice S.R.SINGHARAVELU

Appeal Suit No.884 of 1994

The Lakshmi Vilas Bank Ltd.,
rep.by its Branch Manager,
Thirupur Kumaran Road,
Thirupur. ..Appellant/Plaintiff

..vs..

Auljothi Fibre Industries,
by its Sole Proprietor
M.Shanmugham,
Alagumallai,
Palladam Taluk,
Thirupur. ..Respondents/Defendatns

Appeal Suit filed against the judgment and decree dated 29.03.1994 passed in O.S.No.125 of 1991 on the file of Subordinate Judge, Tirupur.

For Appellant : Mr.M.S.Sundararajan
For Respondent : Mr.S.K.Rakunathan

JUDGMENT

This appeal arises against the judgment dated 29.03.1994 by the learned Subordinate Judge, Thiruppur, in O.S.No.205 of 1990, in dismissing the money claim of the plaintiff Bank made against the respondent / defendant, who, according to the bank, has borrowed a sum of Rs.4,55,000/- on 13.06.1986 on the necessary documents filed therefor. Now, the plaint claim along with contractural interest comes to Rs.9,09,932/-.

2. According to the appellant/plaintiff, the defendant approached the plaintiff Bank for credit facilities for construction of buildings and for purchase of machineries for carrying on fibre industries at Alagumalai and a sum of Rs.4,55,000/- was sanctioned and paid to the defendant by way of term loan on 13.06.1986. In this connection, according to the plaintiff, the defendant had executed a promissory note Ex.A-1 for the said sum on

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the same date, namely, 13.06.1986 agreeing to repay the same to the plaintiff bank with interest at 13.5% per annum.

3. The plaintiff had also produced the letter of hypothecation dated 13.06.1986 Ex.A-2, in which hypothecation of machinery was also mentioned, as well as the letter of Bank Manager under Ex.A-12 dated 14.06.1986. In that letter, it was stated by the Bank Manager that even on 13.06.1986, while the respondent/defendant had borrowed the said amount, he has deposited the registration copy of partition deed of his family in respect of 19.14 acres of land and that was marked as Ex.A-5 dated 04.03.1970; along with the said documents, it was said that the defendant had entrusted the Certificate of Ownership and valuation report of Village Administrative Officer of Alagumalai through Ex.A-6 and kist receipts dated 01.02.1985 and 27.02.1985 as Exs.A-7 and A-8 and also the encumbrance certificate from 01.01.1973 to 01.01.1985 through Ex.A-9 and that from 01.01.1984 to 18.12.1985 as Ex.A-10. These documents are found in the list of documents in Ex.A-12 letter dated 14.06.1986 of plaintiff bank; as per which, the defendant had deposited those documents even on 13.06.1986 with the plaintiff bank in order to create an equitable mortgage in its favour as security for the loan that was borrowed in Ex.A-1 pronote by the defendant.

4. The Manager of the plaintiff, who was examined as P.W.1, would also contend that Ex.A-18 is the revival letter dated 25.11.1988 that came into existence within three years from the date of borrowal and by virtue of such revival letter, the suit is filed within the time.

5. The defendant in his written statement contended that there was no intention to create an equitable mortgage and at no point of time, he has placed the documents with the Manager of the plaintiff bank in order to create an equitable mortgage in their favour. He would further submit that only a xerox copy of the partition deed dated 04.03.1970 has been taken from the defendant. But it is very important to note that under what circumstances the documents have been placed before the bank authority was not adduced by the defendant. The further contention of defendant would be that in the standard forms, his signatures were taken by the Manager of the plaintiff bank and as such, no amount was due from him as there was no actual borrowal. This aspect has been so developed in the course of evidence of the defendant.

6. The learned Judge, who tried the case, has found Ex.A-18 revival letter as unbelievable and believed the version of defendant that he had signed that document while it was blank. He also believed the version of defendant that in order to get a loan, the signatures were obtained. But the defendant had not availed any other loan except the suit loan. The learned Judge has also canvassed upon the failure of plaintiff in mentioning the existence of Ex.A-18 revival letter in their notice issued under Ex.A-20. Therefore, the learned Judge disbelieved Ex.A-18 and found that the suit is barred by limitation.

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7. It was further found by the trial court that as no original/revival document was deposited as admitted by P.W.1, the witness examined on the side of the bank, the registration copy of the partition deed and its entrustment may not go to create an equitable mortgage by deposit of title deeds; this was found on the ground that registration copy of the document may not show the title of the property.

8. The learned counsel Mr.Sundararajan appearing for the appellant/plaintiff bank submitted two points. The first point is that Ex.A-18 was properly executed by defendant on 25.11.1988, which will make the suit claim under pronote on 13.06.1986 was within time. If Ex.A-18 is found true that the suit is within time, there is no dispute over that aspect.

9. The learned counsel Mr.Ragunathan appearing for the respondent/defendant submitted that Ex.A-18 was signed by defendant but only when it was blank. It is unfortunate to note that in none of the letters or replies issued by the defendant, he had mentioned so. Even assuming that Ex.A-18 was not properly executed, there is three other letters (Exs.A-15 to A-17) written by defendant; among which one is three days ahead of Ex.A-18 and in those letters, the defendant pleaded only for re-payment by instalments. This will indicate the proper execution of Ex.A-18 and now the defendant would only state against truth in order to avoid the claim against him.

10. So far as the creation of equitable mortgage by deposit of title deeds is concerned, it has been vividly dealt with in Angu Pillai @ Narayani Achi ..vs.. Kasi Viswanathan (86 L.W.94) by a Division Bench of this Court, wherein it was found as follows:

> "It has been pointed out by a Full Bench of the Rangoon High Court in 1938 Rang.149 that in order to create a valid mortgage, it is not necessary that the whole, or even the most material of the documents of title to the property should show a complete or good title in the depositor, and it is sufficient if the deeds deposited bona fide relate to the property or are material evidence of title or are shown to have been deposited with the intention of creating a security thereon".

11. In that case law, by considering the law in regard to equitable mortgage, which is precisely the same in England as it is in India, reliance was placed upon the decision in Goodwin .vs. Waghorn (41 Rev.Rep.208), wherein a purchaser who had paid his purchase money and had taken possession of the land, did not obtain a conveyance and no title deeds were delivered to him by the vendor. He only deposited the document of contract with intent to create an equitable mortgage. The question arose whether such a document of contract was a document of title. The learned Judge observed as follows:

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"But if the deposit of the copies of court roll be sufficient, I cannot see why an agreement should not also be sufficient. The deposit of the copy of the roll is held to create an equitable mortgage, because it is the best evidence of title that the party has the power of depositing; so the agreement for purchase is the best evidence of title, until the contract is completed and the title deeds are handed over; and in this case there was a deposit of that which was the best evidence...."

12. Similarly, in Dixon .vs. Mukhleston (VIII L.R.Ch.Ap.cases 155), the question of priority between two parties who claimed equitable mortgages arose for consideration; where also it was held that the letter itself would create equitable mortgage.

13. In Dohganna .vs. Jammanna (AIR(1931) Madras 613), it was pointed out that in case of pattas in respect of a land in Zamindari, if the land be at the disposal of the landlord at the time of granting the patta, prima facie such patta would not be a mere bill of rent but something more in order to create an equitable mortgage by depositing of the same. This was also followed in Official Assignee .vs. Basudeva doss (AIR (1925) Madras 723.

14. The decision of the Rangoon High Court in V.E.R.M.A.R.Chettiar Firm .vs. Ma Joo Teen (AIR (1933) Rang. 299) was overruled by a Full Bench of the Rangoon High Court in Chidambaram Chettiar .vs. Aziz Meuh AIR(1938) Rang.149). The Full Bench has reviewed the English and Indian authorities and has pointed out that in order to create a valid mortgage, it is not necessary that the whole, or even the most material of the documents of title to the property should be deposited; nor that the document deposited should show a complete or good title in the depositor and it is sufficient if the deeds deposited bona fide relate to the property or are material evidence of title or are shown to have been deposited with the intention of creating a security thereon.

15. Even in a Division Bench of this Court in M/s.Nataraja Nadar & Sons etc.& others ..vs.. State Bank of India & others (1993-1-L.W 456), the question that was considered was whether an equitable mortgage can be created without depositing the original documents and also without depositing all the relevant documents. In the said judgment in para 26, by relying upon C.Assiamma .vs. State Bank of Mysore (AIR 1990 Kerala 157), it was held that "by 'documents of title' we mean the legal instruments which prove the right of a person in a particular property" and it was held that the copy of documents can also be deposited in creating equitable mortgage. In that case, reliance was placed upon K.J.Nathan .vs. S.V.Maruthi Rao (AIR 1965 SC 430), wherein the following was observed:

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"A Court will have to ascertain in each case whether in substance there is a delivery of title deeds by the debtor to the creditor. If the creditor was already in possession of the title deeds it would be hyper-technical to insist upon the formality of the creditor delivering the title deeds to the debtor and the debtor re-delivering them to the creditor. What would be necessary in those circumstances is whether the parties agreed to treat the documents in the possession of the creditor or his agent as delivery to him for the purpose of the transaction".

So, it is clearly established by catena of case laws that registration copy of document of title can as well be placed for creation of equitable mortgage.

16. Therefore, it is futile on the part of the defendant to contend that no equitable mortgage could be created on filing copy of the partition deed.

17. The circumstance under which defendant says that no borrowal at all was made in the Bank and that he has put his signatures only in standard blank forms shows that there was some other occasion when he happened to borrow from the bank and at that occasion he has put all the signatures. But no other loan was provided by the plaintiff bank and no such loan was also availed on the side of the defendant. D.W.1 himself has deposed that one Palanisamy was the then Manager, with whom he has no aversion or affection. Thus, there is no motive for the bank to create documents against the defendant and the defendant did not make out a case or circumstance indicating that due to that particular circumstance, he was necessitated to put his signatures in the blank forms. So, the way in which there is a total denial of all signatures put by defendant would go to show that his only aim is to get away from the clutches of the claim; it is also to be mentioned that in all subsequent letters of defendant he has sought only for repayment in instalments. He has not setforth the case presently projected in the reply notices issued by him. Therefore, I come to a conclusion that this is an after thought by the defendant and the suit claim has been rightly proved in view of the decisions relied on supra and hence, the judgment and decree of the trial court is liable to be set aside and the suit is to be decreed.

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18. Regarding interest, contractual rate of 13.5% was agreed to be paid. Therefore, I have no other go except to grant contractual interest at the rate of 13.5% per annum.

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19. For the aforesaid reasons, the decree and judgment rendered by the trial court is set aside and the appeal is allowed and the suit is decreed with interest and costs as prayed for in the suit. In this appeal, there will be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Subordinate Judge,
Thiruppur.

Copy to:
The Record Keeper,
V.R.Section,
High Court, Madras.

1 cc To Mr.M.s.SUndarajan, Advocate, SR.24171.
1 cc To Mr.S.K.Rakhunathan, Advocate, SR.24260.

Appeal Suit No.884 of 1994

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